

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

NISBETT,

Plaintiff,

-against-

CCFCO Management,

Defendant.

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC#: _____
DATE FILED: 11/17/2020

20-cv-02739 (ALC)

ORDER OF DISMISSAL

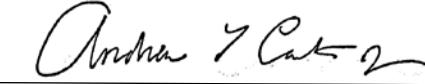
ANDREW L. CARTER, JR., United States District Judge:

Plaintiff initiated this ADA action on April 2, 2020. ECF No. 1. On August 10, 2020, as no proof of service of summons had been filed, the Court entered an order to show cause why the claim should not be dismissed pursuant to Rule 4(m) of the Federal Rules of Civil Procedure. ECF No. 10. On August 12, 2020, Plaintiff filed an Affidavit of Service indicating that service had occurred on August 6, 2020, which triggered an Answer Date of August 27, 2020. ECF No. 11. Because this date of service still exceeded the 90-days allotted by Rule 4(m), the Court granted Plaintiff's request for a *nunc pro tunc* extension of time to serve until August 12, 2020. ECF No. 13. On October 2, 2020, when Defendant had not answered or otherwise responded to the Complaint, and Plaintiff had not moved for default judgment, the Court issued an order to show cause as to why this case should not be dismissed pursuant to Rule 41(b) of the Federal Rules of Civil Procedure. ECF No. 14. Plaintiff filed a letter requesting an extension of time to November 16, 2020 to respond to that order to show cause, ECF No. 15, which the Court granted, ECF No. 16. However, to date, Plaintiff has not filed any response.

"[I]t is unquestioned that Rule 41(b) also gives the district court authority to dismiss a plaintiff's case *sua sponte* for failure to prosecute...". *LeSane v. Hall's Sec. Analyst, Inc.*, 239 F.3d 206, 209 (2d Cir. 2001). In light of Plaintiff's failure to answer the Court's order to show cause, this matter is hereby DISMISSED without prejudice.

SO ORDERED.

Dated: November 17, 2020
New York, New York



Andrew L. Carter, Jr.
ANDREW L. CARTER, JR.
United States District Judge